

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3288 OF 1999

Ramashankar Jhanwar

.....Applicant.

V/s

Ramavtar S. Jhanwar & Anr.

..... Respondents.

Mr. M.S. Mohite for the applicant.

Mr. Sanjiv Panalekar for Respondent No.1.

Mrs. M.M. Deshmukh for the State.

CORAM: V.M. KANADE, J.

DATE : 5th October, 2007

P.C.:

1. Applicant is the original complainant. He has filed this application for leave to appeal being aggrieved by the order passed by the Additional Chief Metropolitan Magistrate, 40th Court, Girgaum, Mumbai, who was pleased to acquit the accused of the offence punishable under section 138 of the Negotiable Instruments Act.

2. Brief facts in nutshell are as under:-

3. It is the case of the applicant that he supplied goods worth Rs. 9,23,000/- to Respondent No.1 in the year 1997. The cheques when they were deposited with their banker, the same were returned

unpaid for insufficient funds. Accordingly, a complaint was filed by the applicant after giving a statutory notice to Respondent No.1. Applicant led evidence by examining himself and examining his Manager. Admittedly, cheques were issued in the name of Mayur Textiles and Monica Textiles. The Trial Court, after appreciating the evidence on record, was pleased to acquit the accused.

4. The learned Counsel appearing on behalf of the applicant submitted that the applicant was a holder in due course and, therefore, was entitled to make demand for payment of the amount of the cheques. He submitted that, therefore, the complaint was maintainable at the instance of the holder in due course. He further submitted that the cheques were crossed and such cheques, if deposited, the Banker was liable to honour the said cheques, though the cheques were issued in the name of Mayur Textiles and Monica Textiles. He submitted that the applicant had established that the goods were delivered to the accused and the Respondent No.1 has also admitted that he has received the goods. It is submitted that, therefore, the cheques were issued in discharge of the liability of receiving the goods.

5. The submissions made by the learned Counsel appearing on behalf of the applicant cannot be accepted. It is an admitted position that the cheques were issued in favour of Mayur Textiles and Monica Textiles. In his cross-examination, the complainant has admitted that he does not know anything about the Mayur Textiles and Monica Textiles and that he is not concerned in any way with the said firms.

It is an admitted position that the complainant is a Proprietor of M/s. Tex Temp Syntex which has nothing to do with Mayur Textiles and Monica Textiles in whose names cheques were issued by the accused. In view of the evidence which was brought on record and more particularly the admission given by the complainant and his witnesses in cross-examination, the Trial Court held that the applicant was not the holder in due course and, therefore, was not entitled to file a complaint. In his cross-examination, the complainant has admitted that he does not know when the cheques came into his possession. In the complaint no averment was made as to what was the reason and why the accused had issued cheques in the name of Mayur Textiles and Monica Textiles. In the absence of this evidence, it cannot be said that the applicant is a holder in due course.

6. Considering the oral and documentary evidence on record, in my view, this is not a fit case for grant of leave. Leave is refused. Application is dismissed.

(V.M. KANADE, J.)

